

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

GERARDO “JERRY” ERNESTO  
GONZALEZ, On Behalf of Himself and  
All Others Similarly Situated,

*Plaintiffs,*

v.

LEWIS ENERGY GROUP, LP,

*Defendant.*

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CAUSE NO.: 5:14-cv-00366

JURY TRIAL DEMANDED

COLLECTIVE ACTION

**ORIGINAL COMPLAINT**

**SUMMARY**

1. The equipment operators (Equipment Operators) on Lewis Energy Group, LP’s (Lewis Energy) hydraulic fracturing crews (Frac Crews) work long, arduous hours. Lewis Energy, however, does not pay its Equipment Operators proper overtime wages as required by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the FLSA). Rather, Lewis Energy fails to include all of the compensation it pays its Equipment Operators when calculating their “regular rates” for overtime compensation purposes. Additionally, Lewis Energy requires its Equipment Operators to work before they are allowed to “clock in” and after they are allowed to “clock out.” Gerardo “Jerry” Ernesto Gonzalez (Gonzalez), a former Equipment Operator for Lewis Energy, bring this collective action seeking to recover the unpaid and/or underpaid overtime wages and other damages he and owed to him Lewis Energy’s other similarly-situated Equipment Operators are owed.

### **JURISDICTION AND VENUE**

2. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question arising under the FLSA.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because Lewis Energy resides in this judicial district and division.

### **THE PARTIES**

4. Gonzalez is a former employee of Lewis Energy. His consent to participate in this collective action is attached hereto as Exhibit 1.

5. Lewis Energy is a Delaware limited partnership with its principal place of business in San Antonio, Bexar County, Texas. Lewis Energy may be served with process by serving its registered agent, Tercero Navarro, Inc., 10101 Reunion Place, Suite 1000, San Antonio, Texas 78216.

### **THE FACTS**

6. Lewis Energy is in the oil and gas business and operates in the Eagle Ford Shale formation in the State of Texas.

7. In each of the past three (3) years, Lewis Energy's gross annual revenues have well exceeded \$500,000.00.

8. Lewis Energy employed Gonzalez as an Equipment Operator on one of Lewis Energy's Frac Crews.

9. Lewis Energy currently operates three (3) Frac Crews, each Frac Crew consisting of a day shift and a night shift, with approximately twelve (12) Equipment Operators per each of the six (6) combined shifts.

10. Gonzalez typically spent his workweeks operating equipment such as pump trucks, K-Mat units, hydration units, blenders and other fracturing equipment.

11. In performing these duties as an Equipment Operator, Gonzalez was an employee engaged in commerce and/or in the production of goods for commerce and/or who handled goods or materials that had been moved in or produced for commerce within the meaning of the FLSA.

12. Gonzalez routinely worked in excess of forty (40) hours in a workweek for Lewis Energy.

13. Lewis Energy was well aware of the fact that Gonzalez routinely worked in excess of forty (40) hours in a workweek.

14. Lewis Energy paid Gonzalez an hourly rate for his work plus a daily bonus (Frac Bonus) for each day that Gonzalez and his Frac Crew were performing fracturing operations.

15. Lewis Energy did not pay Gonzalez at one-and-one-half times his “regular rate” for all of the hours he worked in excess of forty (40) in a workweek.

16. Lewis Energy incorrectly calculated Gonzalez’s “regular rate” by failing to include the Frac Bonuses he earned in the “regular rate” calculation.

17. Lewis Energy also required Gonzalez to perform compensable work before “clocking in” and after “clocking out.”

#### **COLLECTIVE ACTION ALLEGATIONS**

18. Gonzalez re-alleges paragraphs 1-17 as if set out here in their entirety.

19. In addition to Gonzalez, Lewis Energy has employed many other Equipment Operators over the last three (3) years.

20. These Equipment Operators performed the same or similar job duties for Lewis Energy as Gonzalez performed such as operating pump trucks, K-Mat units, hydration units, blenders and other fracturing equipment.

21. Like Gonzalez, in performing their duties as Equipment Operators these other individuals were employees engaged in commerce and/or in the production of goods for commerce and/or who handled goods or materials that had been moved in or produced for commerce within the meaning of the FLSA.

22. Lewis Energy paid these other Equipment Operators in the same manner for the hours they worked including paying them an hourly rate for their work plus a daily bonus (Frac Bonus) for each day that their Frac Crews were performing fracturing operations.

23. Lewis Energy did not pay these other Equipment Operators at one-and-one-half times their “regular rates” for all of the hours they worked in excess of forty (40) in a workweek.

24. Lewis Energy incorrectly calculated these other Equipment Operators’ “regular rates” by failing to include the Frac Bonuses they earned in the “regular rate” calculation.

25. Lewis Energy also required these other Equipment Operators to perform compensable work before “clocking in” and after “clocking out.”

26. Lewis Energy’s other Equipment Operators should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b). Therefore, the class is properly defined as:

**All Equipment Operators employed by Lewis Energy within the 3 years preceding the filing date of this complaint through the time of trial**

#### **CAUSE OF ACTION**

27. Gonzalez re-alleges paragraphs 1-26 as if set out here in their entirety.

28. The FLSA requires employers to pay their employees one-and-one-half times their “regular rates” for hours those employees work in excess of forty (40) in a workweek.

29. Lewis Energy employed Gonzalez and its other Equipment Operators within the meaning of the FLSA.

30. Lewis Energy is an employer within the meaning of the FLSA.

31. Gonzalez and Lewis Energy's other Equipment Operators are or were employees engaged in commerce and/or in the production of goods for commerce and/or handled goods or materials that have been moved in or produced for commerce within the meaning of the FLSA.

32. Lewis Energy is an enterprise engaged in commerce within the meaning of the FLSA.

33. By failing to pay Gonzalez and its other Equipment Operators overtime compensation at one-and-one-half times their "regular rates," Lewis Energy violated the FLSA's overtime provisions.

34. Lewis Energy owes Gonzalez and its other Equipment Operators the difference between the rates actually paid and the proper overtime rates.

35. Lewis Energy also owes Gonzalez and its other Equipment Operators pay at the proper rates for all hours worked before "clocking in" and after "clocking out."

36. Because Lewis Energy knew its pay practices violated the FLSA, or showed reckless for whether its pay practices violated the FLSA, Lewis Energy owe these wages for at least the past three (3) years.

37. Lewis Energy is liable to Gonzalez and its other Equipment Operators for an amount equal to all unpaid and/or underpaid overtime wages.

38. Lewis Energy is, further, liable to Gonzalez and its other Equipment Operators for liquidated damages in an additional amount equal to all unpaid and/or underpaid overtime wages.

39. Gonzalez and Lewis Energy's other Equipment Operators are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

**JURY DEMAND**

40. Gonzalez demands a trial by jury.

**PRAYER**

Gonzalez asks that Lewis Energy be cited to appear and answer, and that the Court:

1. Enter an order allowing this action to proceed as a collective action under the FLSA;
2. Upon final hearing, award Gonzalez and Lewis Energy's other Equipment Operators judgment against Lewis Energy for all unpaid and/or underpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;
3. Upon final hearing, award Gonzalez and Lewis Energy's other Equipment Operators judgment against Lewis Energy for post-judgment interest on all amounts awarded at the highest rate allowable by law; and
4. Award Gonzalez and Lewis Energy's other Equipment Operators all such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,

**/S/ Michael K. Burke**

By: \_\_\_\_\_

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